

REMARKS OF BURTON CRAIGE  
SENATE SUBCOMMITTEE ON PHARMACEUTICAL LIABILITY

April 25, 2012

I am Burton Craige, Legal Affairs Counsel for the North Carolina Advocates for Justice. I appreciate the opportunity to speak with you again.

First, I want to thank Chairman Goolsby and the members of this Subcommittee for the care and attention you have devoted to this important issue. You have given everyone a full opportunity to be heard, including members of the public.

At your first meeting on February 21, I asked this question: What good does this bill do for North Carolina? We are still waiting to hear the answer.

Enacting this bill will not bring one job to North Carolina. The bill provides zero incentive for a manufacturer to come to North Carolina, and zero incentive for a manufacturer to stay here, rather than pulling up stakes and moving overseas. Just ask the people in Michigan, which passed a total immunity bill in 1996, and then watched in shock as Pfizer shut down its Michigan operations, leaving 2,100 laid-off workers behind.

If this bill is passed, negligent pharmaceutical manufacturers in other states and foreign countries will be able to market dangerous drugs in North Carolina with impunity. Citizens in 47 other states, including our neighbors in Tennessee, South Carolina, Virginia and Georgia, will retain the right to recover compensation for their injuries, while our citizens will be shut out of the courts.

We are still waiting to hear the "problem" that this bill would fix. At the first hearing of this subcommittee, I made this statement: "No one today – and no one in the House debates last year – identified a single unreasonable or excessive verdict against a drug manufacturer in North Carolina." The backers of this bill have had two more months to look for such a verdict, but haven't found any. Because they don't exist.

When you or I are reckless and hurt someone, we don't get the protection of a "rebuttable presumption" that can only be overcome by "clear and convincing evidence." Nothing justifies giving multinational drug companies more protection in the North Carolina courts than we give to other individual or corporate defendants.

One more point about the language of this bill. The “fraud exception,” subsection (b)(2), only applies when the FDA has made a finding of fraud “by final agency action.” At the February hearing, I said that our research indicated that the FDA has never made such a determination, and asked the bill’s proponents to provide an example. They have had two months to do the research, and they have found nothing. You know now, beyond any doubt, that the “fraud exception” is itself fraudulent.

The hearing on March 29 provided an illuminating contrast between those who support this bill and those who oppose it. The proponents offered three speakers, all of whom were paid to be here, and two of whom flew in from out of state to speak for multinational drug companies.

Seven people spoke against the bill. None of them was a lobbyist. None received any compensation for being here. Bill and Carolyn Prewitt drove from Kingsport, Tennessee to tell you about the death of their 15-year old granddaughter Brittany, who lived in Arden. Whitney Phipps drove from Long, South Carolina to tell you about the death of his father, who lived in Tabor City. The other speakers against the bill included two North Carolina physicians, David Work, the former Executive Director of the North Carolina Pharmacy Board, Kevin Layne, a community pharmacist in Eden, and Laurie Sanders, the volunteer Executive Director of the North Carolina Coalition for Patient Safety. Ms. Sanders submitted letters from 25 families from all over this state, describing tragedies they had experienced at the hands of negligent drug manufacturers.

Today you heard from AARP, speaking against the bill on behalf of millions of North Carolina senior citizens, and the Attorney General’s Office, speaking against the bill on behalf of North Carolina taxpayers and consumers.

I looked at the Subcommittee website this morning. Lawyers and lobbyists for drug companies have submitted lots for you to consider. But in all that mass of materials, there is not a single letter or statement from any North Carolina citizen or business asking you to pass this bill.

Multinational drug companies support this bill. The people of North Carolina oppose it. Please side with the people.

Thank you.